



## INTERIOR BOARD OF INDIAN APPEALS

Yavapai-Prescott Indian Tribe v. Assistant Secretary - Indian Affairs

37 IBIA 122 (01/25/2002)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

YAVAPAI-PRESCOTT INDIAN TRIBE,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 02-45-A
ASSISTANT SECRETARY - INDIAN	:	
AFFAIRS,	:	
Appellee	:	January 25, 2002

On January 22, 2002, the Board of Indian Appeals (Board) received a copy of a January 18, 2002, letter from the Yavapai-Prescott Indian Tribe (Tribe) to the Assistant Secretary - Indian Affairs (Assistant Secretary). The Tribe seeks review of a December 20, 2001, decision issued by the Assistant Secretary in regard to the blood quantum of Robert Rice.

Normally, the Board would not respond to a copy of a letter to another Departmental official. However, footnote 2 in the Tribe's January 18, 2002, letter states: "If, in fact, the Tribe is entitled to seek appellate review, please consider this correspondence to be a formal Notice of Appeal of [the Assistant Secretary's] decision pursuant to 25 CFR § 2.1, *et seq.*, 25 CFR § 62.1, *et seq.* or 43 CFR § 4.330, *et seq.*" Because the Board's appellate jurisdiction is established in 43 C.F.R. § 4.330, it believes that it is necessary for it to respond to the filing.

The Department's authority in regard to the establishment of blood quantum is set out in 25 C.F.R. Part 62. 25 C.F.R. § 62.4(a) provides in pertinent part:

A person who is the subject of an adverse enrollment action may file or have filed on his/her behalf an appeal. An adverse enrollment action is:

\* \* \* \* \*

(5) The change in degree of Indian blood by a Bureau official which affects an individual; and

(6) The certification of degree of Indian blood by a Bureau official which affects an individual.

It appears that the Assistant Secretary's decision here falls under one or both of these definitions.

The Assistant Secretary's December 20, 2001, decision indicates that the Acting Western Regional Director, Bureau of Indian Affairs, forwarded information to the Assistant Secretary for a final determination in regard to the blood quantum of Robert Rice. This procedure is authorized under 25 C.F.R. § 62.10(a). The Assistant Secretary then made the final decision. See 25 C.F.R. § 62.11. Although the Board knows of nothing which would preclude the Assistant Secretary from reconsidering his decision if he so chose, nothing in Part 62 provides for an appeal to the Board. See, e.g., Martin v. Acting Eastern Oklahoma Regional Director, 36 IBIA 69 (2001); Stogsdill v. Southern Plains Regional Director, 35 IBIA 157 (2000).

Therefore, to the extent that the Tribe intended its January 18, 2002, letter to constitute an appeal to the Board under 43 C.F.R. § 4.330, the Board finds that it does not have jurisdiction to review the Assistant Secretary's decision.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Assistant Secretary's December 20, 2001, decision is docketed but dismissed for lack of jurisdiction.

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//original signed

Kathryn A. Lynn  
Chief Administrative Judge

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//original signed

Anita Vogt  
Administrative Judge